

## FISA Reform

You and Chairman Reyes introduced a FISA Reform bill today (H.R. 3773). Both the Judiciary and Intell Committees approved nearly identical bills on Wednesday and the plan is to get to the Floor next Wednesday, October 17. The idea is to get a Democratic bill passed well before the February, 2008 sunset so we are not up against a deadline as we were in August.

Your bill is a massive improvement over the President's FISA law passed in August in large part because it provides for meaningful court review of wiretaps for foreigners that place calls to American citizens.

- It does this by requiring that the FISA court review a set of procedures to make sure that the surveillance is not used to target Americans. This is very similar to the procedure included in the Democratic bill in August (H.R. 3356 which garnered more than 218 votes in August, but did not get the 2/3 needed).
- Your bill has no retroactive immunity for the phone companies. You have said we cannot consider that request by the Administration unless and until they provide us with the underlying documents to assess their behavior.

Beyond these key issues, the bill provides for several important new safeguards to protect the rights and liberties of Americans that go above and beyond the Democratic bill from August:

- It provides for a broader periodic audit by the DOJ Inspector General, which provides not just ongoing information about the wiretaps, but information about the old warrantless wiretapping program.
- It eliminates language in the current law which could authorize warrantless searches in the U.S. of Americans homes, offices, computers, and medical records.
- It requires the court to approve minimisation procedures to protect calls with Americans and guidelines to make sure Americans are not being targeted.
- It narrows the scope of the newer authority so that it is limited to threats to

national security.

- It specifies once and for all that FISA is the exclusive means of conducting electronic surveillance. This will help prevent future warrantless surveillance programs.
- It insures that Americans traveling abroad cannot have their phone calls tapped without specific court approval.
- It mandates that the Administration keep track of any American's phone calls who are disseminated within the Administration and provides for periodic reports to Congress concerning such dissemination.

This bill responds to the legitimate concerns raised by the Administration while providing safeguards and checks and balances to protect the rights of Americans. The bill was based on intensive discussions with the Civil Liberties groups, who believe that while the bill may not be perfect, it is a step forward from current law and the last Democratic bill. They wanted to go back to the old system of individual warrants – at some point we may be able to do that once we get more information and have a more cooperative Administration – that is why the bill sunsets in December, 2009.